

### **REMARKS**

Applicant respectfully requests reconsideration. Claims 7-62 were previously pending in this application. By this response, Applicant cancels claims 43-61 without prejudice or disclaimer. Claims 7, 24, and 62 are amended. As a result, claims 7-42 and 62 are pending for examination with claims 7, 24 and 62 being independent claims. No new matter has been added.

#### **Rejections Under 35 U.S.C. §103 Are Overcome**

Claims 7-16, 18-23, and 62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Atala (US 5,571,119) in view of Mericle (US 5,752,964). Claim 17 stands rejected as being unpatentable over Atala and Mericle, as applied to Claim 7 above, and further in view of Gordon (US 5,741,277). Claims 24-42 stand rejected as being unpatentable over Atala in view of Mericle and Gordon.

#### **Independent Claims 7 and 62**

Independent claim 7 recites a suturing instrument that comprises, among other features, a shaft that has a proximal end near a handle and a distal end opposite to the proximal end. The distal end of the shaft has a opening and a passageway constructed and arranged to carry a suture wire to the opening. Claim 7 is amended to recite that the passageway and the opening are arranged so that the suture wire extends substantially in a distal direction, away from the proximal end, upon exiting the opening.

Independent claim 62 recites a method of forming a loop suture. The method comprises, among other things, driving deformable suture wire through a passageway in a suturing instrument that has a proximal end and a distal end. Suture wire is bent in a passageway to form a suture wire loop with suture wire that exits the distal end. The suture wire loop is formed without requiring further contact of the instrument with the suture wire after the suture wire extends from the distal end of the suturing instrument and in a direction that extends away from the proximal end.

In Atala, suture wire may move through a passageway 92 and out of a opening 93. However, any suture wire that moves out of this opening would not be directed in a distal direction, contrary to that suggested in the Office Action. To further emphasize this point, and to clarify the

meaning of the words proximal and distal, as used in independent claim 7 and 62, each of these claims are amended to recite that suture wire moves away from the proximal end of the device. In Atala, as shown in Fig. 9 for instance, any suture wire that exits opening 93 would necessarily appear to have to move back towards the proximal end of the device (handle end of the device in Atala) in order to curve to form a loop. Mericle and Gordon fail to satisfy these deficiencies of Atala.

For at least the above reasons, the rejections of independent claim 7, 62, and any claims depending therefrom, are believed to be overcome. Accordingly, withdrawal of these rejections is respectfully requested.

Independent Claim 24

Independent claim 24 recites a suturing instrument that comprises, among other features, a shaft extending from a handle. The shaft has a proximal end near the handle and the distal end opposite the proximal end. The distal end of the shaft has an opening in a passageway having a first radius of curvature lying in a first plane and a second radius of curvature lying in a second plane, different than the first plane.

In the office action, it is conceited that Atala and Mericle failed to disclose a passageway including a first radius of curvature and a second lateral radius of curvature in a different direction than the first radius of curvature, as was previously recited by independent claim 24. It is however suggested that these features are taught by Gordon (Figs. 39, 41A-41C, in column 26, lines 57-67, column 27, lines 1-14). Applicant respectfully points out that the curves shown in Gordon lie in the same plane. To further distinguish each of Atala, Mericle, and Gordon, whether taken individually or even if combined (assuming they are properly combinable-and Applicants position is that they are not).

Accordingly, withdrawal of these rejections is respectfully requested.

**CONCLUSION**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23/2825 under Docket No. D0188.70165US02 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

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